



1       Janiga is an Accredited Senior Appraiser in Business Valuation. Dkt. 423-2. He  
 2 has extensive knowledge and experience in appraising healthcare business enterprises and  
 3 medical professionals' compensation. He has extensive experience in analyzing the fair  
 4 market value of healthcare transactions and arrangements involving the Anti-Kickback  
 5 Statute (AKS). His Report concludes that the compensation NNI paid to 12 healthcare  
 6 providers between 2005 and 2016 was consistent with fair market value. *Id.* at 4, 19.

7           Washington challenges Janiga's testimony because "his opinions are not premised  
 8 on sufficient facts or data, nor are they the product of reliable principles and methods."  
 9 Dkt. 423 at 8. NNI responds that Washington does not dispute Janiga's opinion that the  
 10 physicians were paid fair market value, but instead "attacks [him] for what he did *not*  
 11 say." Dkt. 440 at 2.

12          A qualified expert may testify in the form of an opinion or otherwise only if the  
 13 proffered testimony is both relevant and reliable. Fed. R. Evid. 702; *Teradata Corp. v.*  
 14 *SAP SE*, 124 F.4th 555, 566 (9th Cir. 2024) (citing *Daubert v. Merrell Dow*  
 15 *Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993)). Rule 702 and *Daubert* impose on the  
 16 district court a "gatekeeping" duty to ensure that opinion testimony is relevant and  
 17 reliable, and an expert's opinion should be excluded if it does not have a reliable  
 18 foundation or if it is not based in the knowledge and experience of the relevant discipline.  
 19 *Sonneveldt v. Mazda Motor of Am., Inc.*, 2024 U.S. App. Lexis 32836, \*3 (9th Cir. Oct.  
 20 21, 2024) (citing *Primiano v. Cook*, 598 F.3d 558, 564-65 (9th Cir. 2010)). "Expert  
 21 opinion testimony is relevant if the knowledge underlying it has a valid connection to the  
 22 pertinent inquiry. And it is reliable if the knowledge underlying it has a reliable basis in

1 the knowledge and experience of the relevant discipline.” *Surgical Instrument Serv. Co.*  
 2 v. *Intuitive Surgical, Inc.*, 2024 U.S. Dist. Lexis 81690, \*5 (N.D. Cal. March 31, 2024)  
 3 (quoting *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 739 F.3d 960, 969 (9th Cir.  
 4 2013)). When an expert meets the Rule 702 threshold, “the expert may testify and the  
 5 jury decides how much weight to give that testimony.” *Primiano*, 598 F.3d 558 at 565.

6 First, Washington argues Janiga incorrectly assumes the physicians provided  
 7 necessary bona fide services. Dkt. 423 at 7. It also claims Janiga’s opinion omits other  
 8 benefits physicians received from NNI, such as expenses for meals, lodging, and travel,  
 9 and assistance with writing and publishing medical scholarship. *Id.* at 4, 6–7.

10 These issues are beyond the scope of Janiga’s Report. NNI asked Janiga only to  
 11 opine about whether the physicians’ compensation was fair market value. He was not  
 12 asked to, and did not, opine on any other elements of the AKS’s “Safe Harbor.” See Dkt.  
 13 424-4 at 8, Deposition of Janiga (“my opinion . . . is limited to what’s the fair market  
 14 value for the . . . service.”); *id.* at 10 (“[R]eimbursement of expenses that are incurred and  
 15 not direct compensation . . . isn’t part of our scope of our analysis. We really focused on  
 16 compensation for services and time.”). These are legitimate areas for cross-examination,  
 17 not bases for disqualifying Janiga based on the limited nature of his study.

18 Washington objects that Janiga analyzed only 12 physicians, and argues he should  
 19 have considered how many other consultants “in a position to prescribe NovoSeven”  
 20 were paid by NNI. Dkt. 423 at 8. NNI responds that it provided the 12 physicians’  
 21 compensation information consistent with the parties’ early discovery discussions. Dkt.  
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1 440 at 3. The Court again views this disagreement about the scope of discovery as an area  
2 for cross-examination, not a reason to find Janiga’s methodology flawed.

3 Washington also asserts Janiga’s Report does not account for the fact that NNI’s  
4 compensation structure is based on a physician’s “geographical sphere of influence.” Dkt.  
5 423 at 7. It argues this compensation structure is improper because physicians may end  
6 up receiving work and compensation for the purpose of influencing other physicians. *Id.*  
7 at 3. The Court views a physician’s influence in the medical community akin to stature  
8 and reputation. This is a legitimate factor in arriving at a physician’s compensation and  
9 goes to the weight, not admissibility of Janiga’s testimony. Washington may cross-  
10 examine Janiga on this issue.

11 Finally, Washington argues Janiga’s Report does not mention that Dr. Craig  
12 Kessler, the Editor-in-Chief of the publication *Haemophilia*, received “revenue based  
13 compensation from that publication whose revenue was enhanced by [NNI’s] purchase of  
14 reprints.” Dkt. 423 at 4. Washington additionally contends NNI directly paid Dr. Kessler  
15 for his advice on this case. *Id.* NNI persuasively responds that Janiga was “not asked to  
16 analyze compensation paid by third parties,” an issue that is nonetheless irrelevant to the  
17 scope of Janiga’s study. Dkt. 440 at 10. And Dr. Kessler’s advice to NNI on this case pre-  
18 dates Washington’s allegations that NNI inappropriately paid Dr. Kessler. Any  
19 compensation he received for his advice is not relevant to Janiga’s opinion that Dr.  
20 Kessler was compensated at fair market value.

21 Janiga has sufficient expertise and experience appraising healthcare enterprises  
22 and compensation arrangements. His knowledge, background, and opinions about

1 whether NNI compensated the 12 physicians at fair market value satisfy Rule 702's  
2 requirement in that his testimony will assist the jury in understanding the evidence and  
3 determining facts in issue. His testimony will be permitted because he is a qualified  
4 expert in the healthcare compensation appraisal through education, training, experience,  
5 knowledge, and skill, his report is based on sufficient facts or data, and his opinions are  
6 the product of the reliable application of principles and methods.

7 Washington's motion to exclude Janiga's opinion, Dkt. 423, is **DENIED**.

8 **IT IS SO ORDERED.**

9 Dated this 15th day of July, 2025.

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BENJAMIN H. SETTLE  
United States District Judge

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